

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

In the Matter of:)	
Vacating General Order No. 63 and)	
Adopting New Procedure on Cases)	General Order No. 135
Filed <i>In Forma Pauperis</i> .)	
)	
_____)	

At the Board of Judges meeting held on February 28, 1997, the Judges voted to vacate General Order No. 63 which automatically assigned in forma pauperis actions to a district judge and then automatically referred the actions to a magistrate judge to prepare a report and recommendation on dispositive motions. The district judges then conducted a de novo review of the record in order to rule upon the report and recommendations from the magistrate judges.

It was determined that the report and recommendation process is causing a number of motions to be reported on the six month pending motions report. It is difficult for two judges to review the record related to a certain dispositive motion and allow time for the district court to rule upon any objections to the report and recommendation within a six month period.

Further, General Order No. 63 resulted in the district judges' allocations of civil case being heavily weighted with in forma pauperis actions, while the magistrate judges' allocations of civil cases in the Southern Division did not contain any significant number of in forma pauperis cases.

Moreover, the District of Idaho now has a full-time pro se law clerk who works on the in forma pauperis cases and the best use of judicial resources would be for the pro se law clerk to prepare proposed orders directly for the assigned judge instead of duplicating efforts through the report and recommendation process.

The Board of Judges agreed that pro se cases¹ should be equally distributed between the district and magistrate judges. The Board of Judges would determine the appropriate percentages for each judge in each division and such percentages could be modified when necessary by a vote of the Board of Judges. The magistrate judges would need to receive the express consent of the parties for the action to be decided by a magistrate judge, but it was determined that express consents are normally given by the litigants to proceed before a magistrate judge.

Nothing in this order is intended to prevent a district judge from referring any pro se or non-pro se civil matter to the magistrate judges for the report and recommendation process under 28 U.S.C. §636. Vacating General Order No. 63 simply vacates the automatic referral process for in forma pauperis cases.² Further, the district judges may rescind or vacate any referral orders in place on pro se cases filed prior to April 1, 1997, in order to have the pro se law clerk prepare proposed orders directly for the assigned district judge.

¹ Pro se cases are defined as those cases in which the plaintiff or petitioner is a pro se litigant. Pro se cases would include pro se prisoner litigation, pro se non-prisoner litigation and pro se 28 U.S.C. § 2254 actions. Title 28 U.S.C. § 2255 actions would not be included as the statute requires these cases are to be handled by the district judge who presided over the corresponding federal criminal case.

² General Order No. 10, which automatically refers all Social Security cases to the magistrate judges, is not affected by this order. The magistrate judges shall still have these cases automatically referred to them at the time the cases are filed. If the social security case is pro se, such case shall count against the pro se allocation of the assigned district judge.

Being fully advised in the premises, the Board of Judges **HEREBY ORDERS** that General Order No. 63 is **VACATED** as of April 1, 1997.

It is **FURTHER ORDERED** that the pro se cases filed in the District of Idaho after April 1, 1997, will be allocated equally to the district and magistrate judges in accordance with the percentages determined by the Board of Judges and that such allocation would be independent of the allocation percentages for district and magistrate judges for non-pro se civil cases filed in the Southern Division.

It is **FURTHER ORDERED** that the district's pro se law clerk shall prepare orders directly for the assigned judge of each case, unless the case is referred to a magistrate judge.

DATED this _____ day of March, 1997.

Edward J. Lodge, Chief District Judge

Larry M. Boyle, Magistrate Judge

B. Lynn Winmill, District Judge

Mikel H. Williams, Magistrate Judge